

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

# ARLAN KIOUS

## Claimant

VS.

**STORMONT VAIL REGIONAL MED. CTR.**

Respondent

AND

## SELF-INSURED

Insurance Carrier

AND

# KANSAS WORKERS COMPENSATION FUND

Docket No. 184,134

## ORDER

**ON** the 22nd day of March, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of a Preliminary Hearing Order entered by Administrative Law Judge Floyd V. Palmer, dated January 21, 1994, came on before the Appeals Board for oral argument.

## APPEARANCES

Claimant appeared by and through his attorney, Steven M. Tilton of Topeka, Kansas. Respondent and its insurance carrier appeared by and through their attorney, James C. Wright of Topeka, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, James Biggs of Topeka, Kansas. There were no other appearances.

## RECORD

The record before the Appeals Board is the same as that considered by the Administrative Law Judge, including the documents filed of record with the Division of Workers Compensation in this docketed matter, the transcript of the Preliminary Hearing

before Administrative Law Judge Floyd V. Palmer on January 19, 1994, and the exhibits attached thereto.

### **ISSUES**

The Administrative Law Judge denied claimant's application for temporary total disability compensation which prompted the claimant to seek this review.

The issues before the Appeals Board are:

- (1) Whether the Appeals Board has jurisdiction to review this matter.
- (2) Whether the claimant is entitled to temporary total disability compensation.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board, for preliminary hearing purposes, makes the following findings of fact and conclusions of law:

- (1) In his Order of January 21, 1994, Administrative Law Judge Floyd V. Palmer denied claimant's request for temporary total disability compensation benefits for two reasons: 1) That claimant had not sustained his burden to prove he is totally disabled from gainful employment; and, 2) Claimant is receiving unemployment.

The Appeals Board does not have jurisdiction to review a finding of an Administrative Law Judge denying temporary total disability compensation benefits based upon a factual determination. Here the Administrative Law Judge determined from the evidence presented that claimant is not temporarily totally disabled.

The jurisdiction of the Appeals Board to review preliminary hearing matters is limited to those situations which involve one of the disputed issues set forth in K.S.A. 44-534a(a)(2), or where the Administrative Law Judge has exceeded his or her jurisdiction in granting or denying the relief requested at preliminary hearing in which event jurisdiction is granted the Appeals Board under K.S.A. 44-551(b)(2)(A).

The Administrative Law Judge has not exceeded his jurisdiction in determining whether claimant is temporarily totally disabled and therefore entitled to temporary total disability compensation benefits. Under the facts presented, the Appeals Board lacks jurisdiction to review that finding.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that it is without jurisdiction to review the Preliminary Hearing Order of Administrative Law Judge Floyd V. Palmer, dated January 21, 1994, thereby leaving said Order in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Steven M. Tilton, 1324 Topeka Boulevard, Topeka, KS 66612  
James C. Wright, 534 S. Kansas Avenue, Suite 1400, Topeka, KS 66603-3408  
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Floyd V. Palmer, Administrative Law Judge  
George Gomez, Director